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# DECISION



THE COMPTROLLER GENERAL  
OF THE UNITED STATES  
WASHINGTON, D.C. 20548

FILE: B-194226

DATE: July 20, 1979

## MATTER OF:

B&D Supply Company of Arizona, Inc.

*[Protest of Agency Allowing Award to Qualify its Proposal]*  
DIGEST:

1. Protest filed more than 10 working days after basis for protest is known is untimely under GAO Bid Protest Procedures.
2. When issue raised is not "significant" within meaning of GAO Bid Protest Procedures, otherwise untimely protest may not be considered on merits.

B&D Supply Company of Arizona, Inc. (B&D), pro-  
tests the award of a contract to the Hatfield Plumbing  
Supply Co., Inc. (Hatfield), under request for pro-  
posals (RFP) No. F04605-78-R-0018 issued by the United  
States Air Force (Air Force) for the purpose of solic-  
iting proposals for the operation of a Contractor  
Operated Civil Engineering Supply Store at March Air  
Force Base, California. B&D contends that certain  
terms in Hatfield's proposal were qualifications not  
permitted under the provisions of the RFP and that by  
permitting Hatfield to qualify its proposal the con-  
tracting officer prejudiced the competitive position  
of the other offerors. However, for the reasons indi-  
cated below, B&D's protest is dismissed as untimely.

The RFP was issued on May 19, 1978. After a  
period of negotiations, best and final offers were  
received from six offerors on September 15, 1978.  
These were then evaluated and Hatfield's proposal was  
accepted. On November 9, 1978, the unsuccessful offer-  
ors were notified of this result. The contracting  
officer then received a letter from B&D on December 1,  
1978, requesting information under the Freedom of  
Information Act concerning the contract award. B&D  
asked for the release of the contracting officer's  
determination of responsibility, the negotiation  
memorandum, and section "E," parts I, II and III,

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from the successful proposal. By letter of December 15, 1978, the Air Force notified B&D that section "E" was releasable and that a copy would be furnished upon receipt of the required processing fee. Payment of this fee was received on January 11, 1979, and a copy was then mailed to B&D. On February 2, 1979, the contracting officer received a letter acknowledging receipt of the material already provided and requesting additional information. The contracting officer responded to this request on February 8, 1979. It was not, however, until February 27, 1979, that B&D filed a protest with our Office.

In its initial submission to our Office, B&D alleges that the Air Force allowed Hatfield to qualify its proposal by permitting it to base its price for some items on minimum order amounts. According to B&D, there is no provision in the RFP that allows minimum order quantities and that this also violates the RFP's delivery requirement since if the Air Force does not purchase the minimum order amount, the price is then calculated on the basis of FOB origin rather than FOB destination as provided by the RFP. B&D believes that Hatfield gained an unfair advantage over the other offerors from this action since it was able to quote a lower price because of larger volume purchases. Therefore, B&D requests that we determine whether the evaluation procedures used here were proper.

The Air Force, on the other hand, does not address the merits of B&D's protest since it believes that the protest is untimely. According to the Air Force, B&D knew or should have known the basis for its protest no later than the date on which it received the copy of section "E" of Hatfield's proposal. Since this was mailed to B&D on January 11, 1979, the Air Force believes that B&D should have been aware of the basis for its protest no later than January 18, 1979. Based on this, therefore, the Air Force concludes that B&D's protest, filed with our Office on February 27, 1979, is manifestly late.

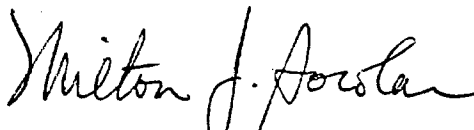
B&D concedes that its protest could be considered untimely under our Bid Protest Procedures. However, it argues that initially it believed that it could resolve the dispute by dealing directly with the contracting officials at March Air Force Base; but after not receiving what it considered satisfactory answers, B&D then decided to file a protest with our Office. In addition, B&D argues that its protest raises significant issues which may be considered under our Bid Protest Procedures even if the protest is untimely.

Our Bid Protest Procedures require that a protest be filed with the contracting agency or with our Office not later than 10 working days after the basis for protest is known. 4 C.F.R. § 20.2 (1979). B&D learned or should have learned the grounds of its protest upon the receipt of section "E" and the other information that it requested in December 1978. Although the specific date of this receipt is not apparent from the record, this information was clearly in B&D's possession prior to its letter of January 31, 1979, requesting additional information from the contracting officer. Under these circumstances, it is obvious that B&D's protest of February 27, 1979, was not filed within the required time period. Therefore, the protest is untimely filed and as a general rule not for consideration on the merits. See Vector Enterprises, Inc., B-193770, January 29, 1979, 79-1 CPD 61.

Yet, as B&D points out, our Bid Protest Procedures do permit consideration of untimely protests when issues "significant to procurement practices or procedures" are involved. 4 C.F.R. § 20.2(c) (1979). However, the significant issue exception is limited to issues which are of widespread interest to the procurement community and is exercised sparingly so that the timeliness standards do not become meaningless. Eglen Hovercraft, Incorporated, B-193050, January 22, 1979, 79-1 CPD 39; Mil-Air, Inc., B-191424, July 20, 1978, 78-2 CPD 55. In this connection, we have held that a protest involving issues that have been considered in prior decisions does not present "significant" issues within the meaning of 4 C.F.R. § 20.2(c). Jones & Guerrero Co., Incorporated, B-192328, October 23, 1978, 78-2 CPD 296.

B&D argues that the Contractor-Operated Civil Engineering Supply Store concept is a Department of Defense-wide system and that there are presently at least 19 solicitations similar to the one under discussion at various stages of the procurement process with at least 15 more to be issued during this calendar year. Based on this, B&D believes that the issues raised in its protest are "significant" since the same evaluation procedure used here may be used in these other procurements resulting in far greater costs to the Government. The actual issue raised by B&D's protest is whether all offerors were treated equally in the evaluation of their proposals since, in B&D's opinion, Hatfield alone was permitted to qualify its proposal by basing its price for some items on minimum order amounts. Yet, we note that in a letter dated September 1, 1978, the Air Force modified the RFP by authorizing minimum order amounts for certain items. Consequently, in the absence of alleged misconduct or bad faith on the part of the Air Force, we believe that the type of issue raised--the equal treatment of offerors--is one that our Office has considered many times before. See, e.g., Homemaker Health Aide Services, B-188914, September 27, 1977, 77-2 CPD 230. Therefore, B&D has not raised a "significant" issue, and its otherwise untimely protest may not be considered on the merits. Vector Enterprises, Inc., supra; Jones & Guerrero Co., Incorporated, supra.

Protest dismissed.



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General Counsel